

RE-EVALUATION OF THE FIFRA SECTION 24(c) REVIEW PROCESS FOR STATE REGISTRATIONS THAT ARE MORE RESTRICTIVE THAN THE FEDERAL REGISTRATION

ISSUE

Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) states that “*A state may provide registration for additional uses of federally registered pesticides formulated for distribution and use within that State to meet special local needs...*” Many of these special local needs (SLN) registrations are for additional uses not authorized by the EPA-approved label, for example, applying the pesticide to a different crop (provided a tolerance exists for that crop) to address an outbreak of disease, adding an alternative application method that suits the practices of that state, or adding a new pest species that is not on the EPA-approved label. However, rather than providing for state registration of additional uses not included on the EPA-approved label, some states issue section 24(c) registrations that are more narrow than the EPA-approved label, for example, adding a more restrictive application cut-off date, adding training and certification requirements, or limiting the number of treatments permitted by the EPA-approved label.

EPA is re-evaluating its section 24(c) review process to clarify whether states may issue SLN registrations which are more restrictive than the federal registration.

BACKGROUND

1. Section 24(c) entitled “Additional Uses” states: “A State may provide registration for *additional uses* of federally registered pesticides formulated for distribution and use within that State to meet special local needs in accord with the purposes of this Act and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator.”
2. Nothing in Section 24(c) indicates that a state may place restrictions on a federally approved label. Section 24(a), however, provides states with the ability to place restrictions that exceed the federally approved label: [a] State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act.”
3. EPA currently receives approximately 300 notifications of section 24(c) registrations annually. The majority of these SLN registrations are for additional uses not authorized by the EPA-approved label. Examples of common section 24(c) registrations include: authorizing use against a pest species not approved on the EPA-approved label, use of an additional application method, or applications to a different crop to address a pest outbreak. These types of additional uses clearly fall within the scope of FIFRA section 24(c).
4. However, there are examples where, rather than registering additional uses not found on the EPA-approved label, some section 24(c) registrations have more restrictions than the EPA-approved label. In the past EPA has generally allowed those registrations. Examples include the addition of more restrictive cut-off dates, the inclusion of additional training requirements, more stringent restrictions regarding the time of day when the pesticide can be applied and restricting the use

directions by limiting the number of treatments permitted by the EPA-approved label.

5. EPA is concerned that having section 24(c) registrations that are more restrictive than the EPA-approved label has the potential to result in confusion, because the less restrictive EPA-approved registration is still in effect and products bearing only the EPA-approved label may still be available in the state.

REQUEST FOR COMMENT

EPA would like to request comments and information from state pesticide regulatory agencies, growers, pesticide registrants and other stakeholders to inform the Agency as it re-evaluates its review process for section 24(c) registrations that are more restrictive than the federal registration.

Specifically, EPA would like to solicit comments on the following:

1. What would the impacts be if states relied on FIFRA section 24(a) rather than section 24(c) to impose restrictions to an EPA-approved label?
2. Are there other methods states could use to impose restrictions to an EPA-approved label if the option of using section 24(c) of FIFRA is removed?
3. Given the apparently complementary authorities of section 24(a) and section 24(c), why are states relying on section 24(c) for more restrictive SLN registrations rather than relying on section 24(a)?

RECOMMENDATION

Ex. 5 Deliberative Process (DP)